

OCT 01 2009

JAMES M. HATTEN, Clerk  
By: *[Signature]* Deputy Clerk

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES OF AMERICA  
*ex rel.* KAMAL MUSTAFA  
AL-SULTAN,

Plaintiff/Relator,

v.

THE PUBLIC WAREHOUSING  
COMPANY--K.S.C. d/b/a PWC  
LOGISTICS; THE SULTAN CENTER  
FOOD PRODUCTS COMPANY,  
K.S.C.; TAREK ABDUL AZIZ  
SULTAN AL-ESSA; CHARLES  
TOBIAS SWITZER; and EMAD  
ALSALEH,

Defendants.

Civil Case No. 1 05-CV 2968  
JURY TRIAL DEMANDED

**FILED IN CAMERA AND  
UNDER SEAL**

**SECOND AMENDED COMPLAINT  
FOR VIOLATIONS OF THE FALSE CLAIMS ACT**

COMES NOW Plaintiff/Relator, United States of America *ex rel.* Kamal Mustafa Al-Sultan, by and through counsel, and, prior to the filing of any responsive pleading herein, amends its Complaint and First Amended Complaint, previously filed under seal herein on September 25, 2006, by adding the following allegations thereto:

## COUNT VII

**Continuation of False Claims Involving the Second PV Contract**  
**(By Plaintiff/Relator Against All Defendants)**  
**31 U.S.C. §§ 3729(a)(1) and 3729(a)(2)**

123. Plaintiff/Relator hereby realleges Paragraphs 1-94 of his relator Complaint for Violations of the False Claims Act, and related claims, as filed on November 18, 2005 (the “Original Complaint”).

124. Plaintiff/Relator hereby realleges Paragraphs 95-122 of his relator First Amended Complaint for Violations of the False Claims Act, and related claims as filed on September 25, 2006 (the “First Amended Complaint”).

125. PWC continues to perform, without interruption, under the Second PV Contract. The United States Government has exercised each of the applicable option years under the Second PV Contract.<sup>1</sup>

126. Pursuant to Modification P00068 to the Second PV Contract, the United States Government invoked the third term and final option period and extended PWC’s performance of the Second PV Contract on June 3, 2009, through December 4, 2010 (see Exhibit “Q”). The maximum value of this extension is \$1.4 billion.

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<sup>1</sup> Terms of art used in this pleading have the same meaning as those used in the Original Complaint.

127. On or about May 2, 2008, the United States Government issued a new solicitation, SPM300-08-R-0061 (“Third PV Contract Solicitation”), for a “Prime Vendor” food distributor for authorized military customers for Kuwait, Iraq, and Jordan to replace the Second Prime Vendor Contract currently in effect (the “Third PV Contract”). The Third PV Contract Solicitation has been amended 22 times by the United States Government since that time. The closing date for this solicitation was originally June 30, 2008, but has, by way of several modifications, been extended until September 1, 2009. On information and belief, Defendants have submitted a bid to win the award of the Third PV Solicitation and have filed bid protests challenging the Third PV Contract Solicitation on numerous grounds, many of which, upon information and belief, are related to the allegations asserted in the action pending before the Court.

128. Plaintiff/Relator continues to do extensive analysis of, among other things, various PWC invoices submitted to the United States Government. In comparing them to prices and quotes supplied by approved sources and actual suppliers (and in certain cases retail prices charged by TSC, itself, to the average consumer off the street in its Kuwait retail centers) for the same time periods, Plaintiff/Relator has determined that Defendants continue to consistently, illegally, and improperly inflate the costs of the market ready items charged to the United

States Government by between 30-70%! In fact, in more than a few cases, these mark-ups by the Defendants exceed 100-300% and beyond!

129. The fraudulent schemes described in Paragraphs 1-94 of the Original Complaint and Paragraphs 95-117 of the First Amended Complaint continue unabated through the date hereof with respect to the PV Contracts.

130. Defendants have engaged, and continue to engage, in a massive cover-up, have engaged, and continue to engage, in significant additional fraudulent conduct, and continue to submit false claims to the United States Government to hide their illegal and unlawful conduct, as described herein.

## **COUNT X**

### **Amended Damages as a Result of False Claims, Etc., by Defendants (By Plaintiff/Relator Against All Defendants) 31 U.S.C. §§ 3729(a)(1) and 3729(a)(2)**

131. Paragraphs 1-130 of the Second Amended Complaint are hereby expressly incorporated herein by reference as if the same were fully set forth herein.

132. The United States Government has paid the unauthorized or inflated and false claims to Defendant PWC; and PWC's co-Defendants have profited along with PWC by reason of said claims. As a result of the conduct alleged in this First Amended Complaint for relief, which continues as of the date hereof, the

United States Government has been damaged in an amount exceeding \$1,000,000,000 to date, and the fraud continues unabated. Pursuant to 31 U.S.C. § 3729(a), the United States Government *ex rel.* Plaintiff/Relator is entitled to recover from Defendants, three times the amount of damages which it has sustained by reason of such amended claims, in excess of \$3,000,000,000. The United States Government *ex rel.* Plaintiff/Relator is further entitled to recover from the Defendants, a civil penalty of \$10,000.00 for each false claim submitted by PWC and its co-Defendants in an amount to be determined at trial pursuant to 31 U.S.C.A. 3729(a).

133. Defendants must disgorge said monies.

WHEREFORE, having amended the Original Complaint and the First Amended Complaint by adding the foregoing Counts thereto, Plaintiff/Relator PRAYS for judgment and relief as follows:

(a) On Count I (False Claims Act – Presentation of False Claims), against Defendants, jointly and severally, for damages trebled, in an amount to be determined at trial, and civil penalties as allowed by law, together with costs, including the cost of investigation and interest.

(b) On Count II (False Claims Act – Use of False Statements), against Defendants, jointly and severally, for damages trebled, in an amount to be

determined at trial, and civil penalties as allowed by law, together with costs, including the cost of investigation and interest.

(c) On Count III (False Claims Act - Conspiracy), against all Defendants, jointly and severally, for damages trebled, in an amount to be determined at trial, and civil penalties as allowed by law, together with costs, including the cost of investigation and interest.

(d) On Count IV (Breach of Contract), against all Defendants, jointly and severally, for damages, in an amount to be determined at trial, and civil penalties as allowed by law, together with costs, including the cost of investigation and interest.

(e) On Count V (Payment Under Mistake of Fact), against all Defendants, jointly and severally, for damages, in an amount to be determined at trial, and civil penalties as allowed by law, together with costs, including the cost of investigation and interest.

(f) On Count VI (Unjust Enrichment) against all Defendants, jointly and severally, for damages, in an amount to be determined at trial, and civil penalties as allowed by law, together with costs, including the cost of investigation and interest.

(g) On Count VII (Continuation of False Claims Involving the Second PV Contract), against all Defendants, jointly and severally, for treble damages, in an amount to be determined at trial, and civil penalties as allowed by law, together with costs, including the cost of investigation and interest.

(h) On Count VIII (Illegal Rebate Kickback Scheme By Defendants), against all Defendants, jointly and severally, for treble damages, in an amount to be determined at trial, and civil penalties as allowed by law, together with costs, including the cost of investigation and interest.

(i) On Count IX (False Claims Act - Presentation of False Claims - Pricing Scam for Local Market Ready Products), against all Defendants, jointly and severally, for treble damages, in an amount to be determined at trial, and civil penalties as allowed by law, together with costs, including the cost of investigation and interest.

(j) On Count X (Amended Damages as a Result of False Claims, Etc., by Defendants), against all Defendants, jointly and severally, for treble damages, in an amount to be determined at trial, and civil penalties as allowed by law, together with costs, including the cost of investigation and interest.

(k) That Defendants cease and desist from violating U.S.C.A. § 3729 et seq. in the performance of the Prime Vendor Contracts.

(l) An award to Plaintiff/Relator of the maximum amounts allowed pursuant to U.S.C.A. § 3730(d) and other applicable statutes and rules.

(m) An award to Plaintiff/Relator for all costs and expenses of this action, including attorney's fees pursuant to U.S.C.A. § 3730(a) and other applicable statutes and rules.

(n) All such other and further relief in favor of the United States of America and Plaintiff/Relator as the Court may deem just, proper and equitable.

**A JURY TRIAL IS DEMANDED UPON ALL ISSUES SO TRIABLE  
PURSUANT TO RULE 38, FEDERAL RULES OF CIVIL PROCEDURE.**

This 1<sup>st</sup> day of ~~September~~, 2009.

*October*

Respectfully submitted,


**SIMS MOSS KLINE & DAVIS LLP**

By: 

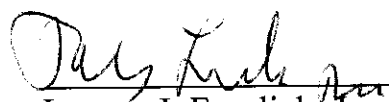
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Special Counsel for Plaintiff/Relator

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<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>				1. CONTRACT ID CODE		PAGE OF PAGES	
2. AMENDMENT/MODIFICATION NO. 0022		3. EFFECTIVE DATE 30 JUL 2009		4. REQUISITION/PURCHASE REQ. NO.		5. PROJECT NO. (If applicable)	
6. ISSUED BY DEFENSE SUPPLY CENTER PHILADELPHIA DIRECTORATE OF SUBSISTENCE, BLDG. #6 700 ROBBINS AVENUE PHILADELPHIA, PA 19111-5092 POC: LINDA L. FORD/DSCP-FTAH/215-737-7804		CODE SPM300		7. ADMINISTERED BY (If other than Item 6) CODE			
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)				9A. AMENDMENT OF SOLICITATION NO. SPM300-08-R-0061			
				9B. DATED (SEE ITEM 11) 02 MAY 08			
				10A. MODIFICATION OF CONTRACT/ORDER NO.			
				10B. DATED (SEE ITEM 13)			
CODE		FACILITY CODE					
<b>11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS</b>							
<input checked="" type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input checked="" type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing items 9 and 15, and returning <u>1</u> copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.							
12. Accounting and Appropriation Data (If required)							
<b>13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.</b>							
(X) A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT/ORDER NO. IN ITEM 10A. B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b). C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: D. OTHER (Specify type of modification and authority)							
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input type="checkbox"/> is required to sign this document and return _____ copies to the issuing office.							
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)							
The closing date for this solicitation has been extended. On page 2, revise the "OFFER DUE DATE/LOCAL TIME" from July 30, 2009, 3:00 P.M. PHILADELPHIA TIME to September 1, 2009, 3:00 P.M. PHILADELPHIA TIME and replace the note with the following:  NOTE: Any firm that submitted an offer in response to amendment 0018 is not required to revise that offer; however, it must submit one originally signed copy of this amendment 0022 and any future amendment(s).							
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.							
15A. NAME AND TITLE OF SIGNER (Type or print)				16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)			
15B. CONTRACTOR/OFFEROR		15C. DATE SIGNED		16B. UNITED STATES OF AMERICA BY _____		16C. DATE SIGNED	
(Signature of person authorized to sign)				(Signature of Contracting Officer)			
NSN 7540-01-152-9070 PREVIOUS EDITION UNUSABLE		PerFORM (DLA)		STANDARD FORM 30 (REV. 10-83) Prescribed by GSA FAR (48 CFR) 53.243			

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused to be sent a true and correct copy of the **SECOND AMENDED COMPLAINT FOR VIOLATIONS OF THE FALSE CLAIMS ACT**, by courier and by Federal Express, to each of the following:

Amy L. Berne, Esq.  
Chief of Civil Division  
Northern District of Georgia  
United States Attorney's Office  
75 Spring Street, S.W., Suite 600  
Atlanta, GA 30303  
(via courier)

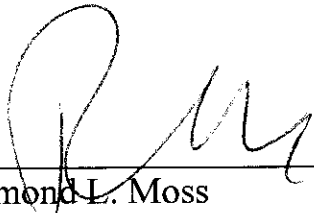
Barbara E. Nelan, Esq.  
Assistant U.S. Attorney  
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United States Attorney's Office  
75 Spring Street, S.W., Suite 600  
Atlanta, GA 30303  
(via courier)

Sally Q. Yates, Esq.  
Acting United States Attorney  
United States Attorney's Office  
Northern District of Georgia  
75 Spring Street, S.W., Suite 600  
Atlanta, GA 30303  
(via courier)

The Honorable Eric H. Holder, Jr.  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001  
(via Federal Express)

This 13<sup>th</sup> <sup>October</sup> day of ~~September~~, 2009.

Three Ravinia Drive, Suite 1700  
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Telephone No. (770) 481-7200  
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\_\_\_\_\_  
Raymond L. Moss  
Counsel for Plaintiff/Relator

**THIS DOCUMENT HAS NOT BEEN SERVED UPON THE  
DEFENDANTS BECAUSE THIS CASE REMAINS UNDER SEAL**